

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of the Applications of)	
)	
ALOK K. SEN)	File No. 0001076433
AFTAB M. UMAR)	File No. 0001068038
JOSY THOMAS)	File No. 0001076434
)	
For New Conventional Industrial/Business Pool)	
Stations in North Miami, Florida)	

ORDER ON RECONSIDERATION

Adopted: September 22, 2003

Released: September 23, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On January 30, 2003, Aftab M. Umar (Umar) filed a petition for reconsideration¹ of the dismissal of his above-captioned application by the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (LTAB).² On February 3, 2003, Josy Thomas (Thomas) filed a petition for reconsideration³ of LTAB's dismissal of her above-captioned application.⁴ On March 12, 2003, Alok K. Sen (Sen) filed a petition for reconsideration⁵ of LTAB's dismissal of his above-captioned application.⁶ We are addressing the three separately filed reconsideration petitions in the instant order because they raise common questions of fact and law.⁷ For the reasons set forth herein, we deny the petitions for reconsideration.

¹ Petition for Reconsideration filed by Aftab M. Umar on January 30, 2003 (Umar Petition).

² See Automated Letter, Ref. 1695324, from LTAB to Aftab M. Umar (Jan. 15, 2003).

³ Petition for Reconsideration filed by Josy Thomas on February 3, 2003 (Thomas Petition). Our records reflect receipt of this petition in Gettysburg, PA, on February 3, 2003. Given that the petition is addressed to the Commission's Secretary in Washington, D.C., and copied to the Chief, LTAB in Gettysburg, PA, we are assuming, *arguendo* that it was filed timely with the Office of the Secretary. Because petitions for reconsideration are procedurally defective if not timely filed with the Office of the Secretary, *see* 47 C.F.R. § 1.106(i), we note that any petition for reconsideration or application for review of the instant order must, as a threshold matter, establish that the Thomas Petition was timely filed with the Commission's Office of the Secretary in Washington, D.C. *See, e.g.,* Eastern Municipal Water District, *Order on Reconsideration*, 16 FCC Rcd 209 (WTB PSPWD 2001).

⁴ See Automated Letter, Ref. 1707393 from LTAB to Josy Thomas (Jan. 22, 2003).

⁵ Petition for Reconsideration filed by Alok K. Sen on March 12, 2003 (Sen Petition).

⁶ See Automated Letter, Ref. 1768507, from LTAB to Alok K. Sen (Mar. 4, 2003).

⁷ The petitioners make the same argument as to why the LTAB should not have dismissed their captioned applications. The applications proposed the same base station location and requested frequencies governed by 47 C.F.R. §§ 90.301-90.317.

2. *Background.* Each of the captioned applications requested authority to operate a new conventional Industrial/Business Pool station at the same location in North Miami, Florida, using a frequency pair in the 470-476 MHz range. Although 470-476 MHz is designated broadcast television Channel 14, in the Miami, Florida area, this spectrum is shared on a geographical basis by television broadcast and land mobile radio stations.⁸ In this connection, LTAB dismissed each of the captioned applications because the location proposed for each base station was less than 1.6 km (1 mi) from television Station WSEC-TV, Miami, Florida.⁹ Each petitioner argues that LTAB's dismissal was erroneous because there is no television station licensed in the vicinity of Miami, Florida, under call sign WSEC-TV.¹⁰

3. *Discussion.* Section 90.305(d) of the Commission's Rules requires land mobile base and control stations operating within television Channel 14 (470-476 MHz) to be located a minimum of 1.6 km (1 mi) from local television stations operating on UHF TV Channels 16, 17, 18, 19, 21 and 22. Section 90.307(e) of the Commission's Rules states that the television stations to be protected are listed in the Commission's publication, "TV Stations to be considered in the preparation of Applications for Land Mobile Facilities in the Band 470-512 MHz."¹¹ This publication lists WSEC-TV, Ch. No. 17, in Miami, FL, as one of the television facilities to be protected.

4. The petitioners are correct in their contention that no television station with call sign WSEC-TV currently operates in the State of Florida. The correct call sign of the television station entitled to protection under the Commission's Rules is WLRN-TV. Although the station's call sign was changed, WLRN-TV is still afforded protection pursuant to Sections 90.305(d) and 90.307(e) of the Commission's Rules. That is, land mobile stations operating on television Channel 14, in the Miami, Florida area, are required to maintain a 1.6 km separation from the facility coordinates listed in the Commission's publication for Station WSEC-TV (now WLRN-TV).¹² Given that each of the captioned applications proposed the same transmitter site, which is less than 1.6 km from Station WLRN-TV, we find that the operations proposed in each application was inconsistent with the Commission's Rules. Further, given that the applications did not include a waiver request, they were thus defective and subject to dismissal.¹³ Significantly, the petitioners fail to establish any basis for overturning LTAB's dismissal of the subject applications.

5. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Aftab M. Umar on

⁸ See, e.g., 47 C.F.R. §§ 90.301, 303. Television Channel 14 is shared on a geographical basis by television broadcast and land mobile stations in several cities including Miami. *Id.*

⁹ 47 C.F.R. § 90.305(d).

¹⁰ See notes 2, 4, and 6, *supra*.

¹¹ 47 C.F.R. § 90.307(e).

¹² The coordinates of the television Channel 17 operation that land mobile applicants must protect are listed in the Commission's publication as follows: 25° 58' 46" N, 80° 11' 50" W. This location is 1.5 km from the site proposed in the captioned applications. We also note that Station WLRN-TV is currently authorized to operate at the following site: 25° 57' 30" N, 80° 12' 44" W, which is 1.42 km from the petitioners' proposed site.

¹³ See 47 C.F.R. § 1.934(d)(2).

January 30, 2003, the Petition for Reconsideration filed by Josy Thomas on February 3, 2003, and the Petition for Reconsideration filed by Alok K. Sen on March 12, 2003, ARE DENIED.¹⁴

6. This action is taken under delegated authority pursuant to Sections 0.331 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

¹⁴ We are assuming, *arguendo*, that the Thomas Petition was filed timely. See note 3, *supra*.